



# UNITED STATES PATENT AND TRADEMARK OFFICE

*Doh*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,865	01/17/2001	Hiroshi Kyusojin	09792909-4886	5798
7590	05/13/2005			EXAMINER SAM, PHIRIN
Charles P. Sammut Attorney at Law 350 Woodside Avenue Mill Valley, CA 94941-3822			ART UNIT 2661	PAPER NUMBER

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/761,865	KYUSOJIN ET AL.
Examiner	Art Unit	
Phirin Sam	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 December 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1,2 and 5-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2 and 5-8 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 01 December 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Divine*

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)      2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	<b>PRINRIN SAM</b> <b>PRIMARY EXAMINER</b>	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
--	---	--

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 6-8 are rejected under 35 U.S.C. 102(1) as being anticipated by US Patent 6,324,165 hereinafter referred as "Fan".

Fan discloses the invention (**claims 7 and 8**) as claimed including a packet transmission apparatus for transmitting a plurality of flows onto a packet network by carrying out bandwidth guaranteeing, comprising:

- (a) scheduling means for controlling an order of packets (see Fig. 3, col. 7, lines 58-59, col. 8, lines 1-2, 65-67, and col. 9, lines 23-25);
- (b) shaping means for controlling a flow rate of packets (see Fig. 1, col. 7, lines 58-62, and col. 8, lines 50-56);
- (c) bandwidth guaranteeing is carried out for the plurality of flows by independently controlling a packet order and a packet flow rate (see Fig. 3, col. 8, lines 58-64, and col. 10, lines 12-23).

**Regarding claim 6**, Fan discloses a packet transmitting method comprising the steps of:

- (a) independently controlling a packet order and a packet flow rate in a transmission terminal on a packet network (see Fig. 1, col. 7, lines 58-62, and col. 9, lines 65-67);

(b) carrying out bandwidth guaranteeing for a plurality of flows (see Fig. 3, col. 10, lines 12-23).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,317,415 hereinafter referred as (Darnell) in view of US Patent 5,838,662 hereinafter referred as "Miyamoto".

Darnell discloses the invention (**amended claim 1, claims 2, and 5**) as claimed including a packet transmitting method comprising the steps of:

(a) controlling a timing of packet transmission in a transmission terminal on a packet network (see Figs. 4-6, abstract, col. 10, lines 1-30);

(b) wherein a packet is transmitted at an interval according to a packet size (see Figs. 1 and 6, col. 18, lines 12-34);

Darnell does not disclose controlling the amount of data to be transmitted per unit time from the transmission terminal to the network. However, Miyamoto discloses controlling the amount of data to be transmitted (see Figs. 1 and 13, col. 18, lines 24-26, and col. 29, lines 55-58). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine controlling the amount of data to be transmitted from the transmission terminal teaching by Miyamoto with Darnell. The motivation for doing so would have been to provide to prevent the occurrence of a busy condition and still enables lines to be used efficiently in the data transferring read on column 2, lines 28-30. Therefore, it would have been obvious to combine Miyamoto and Darnell to obtain the invention as specified in the claims 1, 2, and 5.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 2, and 5-8 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phirin Sam whose telephone number is (571) 272-3082. The examiner can normally be reached on Mon-Fri, 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272 - 3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully submitted,

Date: May 11, 2005

  
**PHIRIN SAM**  
**PRIMARY EXAMINER**